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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,556	09/16/2003	Ernest C. Gerber	4061-91	2590

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EXAMINER

SORKIN, DAVID L

ART UNIT PAPER NUMBER

1723

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/663,556	GERBER, ERNEST C.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David L. Sorkin	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-14 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 15, 16, 21 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. In claim 21, the period at the end of line 4 should be a semicolon.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11, 14, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Potters et al. (US 3,130,070). Regarding claim 11, Potters ('070) discloses a blending and dispensing assembly having an inlet end (near 6) and a discharge end (near 52), said inlet end being configured to fit and seal against a base product delivery end outlet of a flowable mixture dispensing head (for example, as seen in Fig. 1, the inlet of 30 configured to seal and fit against, for example, 6; also, the top of 6 would be capable of being fit and sealed to a hypothetical dispensing head), said assembly having a blending chamber (30); a manifold (34, 43, 48) on said assembly with multiple passageways (43,38) in the manifold for delivery of fluid ingredients in a first direction from outside said assembly into said chamber; an auger (5) in said blending chamber and operable to move a mixture from said blending chamber to an outlet (52) at said discharge end; and a blender motor (10) coupled to said auger to actuate said auger. Regarding claim 14, said auger has at least one helical flight (8) from one end of the auger to the other end of the auger (see Fig. 1), said flight having

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interruptions (22) along it to enable back flow of the mixture along the length of the auger during rotation of the auger. Regarding claim 17, Potters ('070) discloses a blending and dispensing assembly having an inlet end (near 6) and a discharge end (near 52), said inlet end being configured to fit and seal against a base product delivery end outlet of a flowable mixture dispensing head (for example, as seen in Fig. 1, the inlet of 30 configured to seal and fit against, for example, 6; also, the top of 6 would be capable of being fit and sealed to a hypothetical dispensing head), said assembly having a blending chamber (30); a plurality of ingredient sources (40, 45) storing different ingredients for addition to a base product in a direction from outside said assembly into said chamber; an auger (5) in said blending chamber and operable to move a mixture from said blending chamber to an outlet (52) at said discharge end; and a blender motor (10) coupled to said auger to actuate said auger. Regarding claim 20, said auger has at least one helical flight (8) from one end of the auger to the other end of the auger (see Fig. 1), said flight having interruptions (22) along it to enable back flow of the mixture along the length of the auger during rotation of the auger.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 12, 13, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potters et al. (US 3,130,070) in view of Borys (US 3,251,508). In the

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apparatus of Potters ('070) discussed above, the claimed pluralities of valves are not disclosed. Borys ('508) teaches a plurality of one-way valves (19, 28) and shut off valves (16,25) as well as control valves (17,26). It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Potters ('070) with the claimed plurality of valves to control flow as taught by Borys ('508). See col. 2, lines 8-25 and col. 3, lines 27-33. Regarding claims 13 and 19, said auger has slots (22).

### ***Allowable Subject Matter***

6. Claims 15, 16, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

7. Applicant's argues that the section 102(b) rejection is based upon "non-analogous art", forgetting that "Arguments that the alleged anticipatory prior art is 'nonanalogous art' or 'teaches away from the invention' or is not recognized as solving the problem solved by the claimed invention, [are] not 'germane' to a rejection under section 102." *Twin Disc, Inc. v. United States*, 231 USPQ 417, 424 (Cl. Ct. 1986) (quoting *In re Self*, 213 USPQ 1, 7 (CCPA 1982)). Potters (US 3,313,070) not only is analogous to the instant invention, it is the instant invention as claimed in the claims rejected under section 102(b).

8. Recitation of "configured to fit and seal against a base product delivery outlet of a flowable mixture dispenser head" is neither a positive recitation of a "dispenser head" nor a method step of fitting and sealing. Therefore, references not disclosing a

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"dispenser head" and/or not disclosing steps of fitting and sealing may still be anticipatory. "[T]he manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey*, 152 USPQ 235 (CCPA 1967).

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

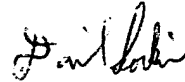
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS